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In re Application of :
YURY KALNITSKY :
Application No. 10/760,137 : DECISION ON PETITION
Filed: 01/16/2004 :
Attorney Docket No. 336001-2040 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF DECISION ON REQUEST TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE NOTICE OF ALLOWANCE," filed September 25, 2008, to withdraw the holding of abandonment in the above-identified application.

On December 13, 2007, the Office mailed a Notice of Allowance and Fee(s) Due, which set a three-month statutory period for reply. In the absence of a timely filed response, the application became abandoned on March 14, 2008. On April 7, 2008, the Office mailed a Notice of Abandonment.

Petitioners request that the USPTO withdraw the holding of abandonment because they did not receive the Notice Allowance and Fee(s) Due mailed on December 13, 2007. Petitioners assert that they submitted a CD and a Customer Number Upload Spreadsheet signed by patent practitioner Frank DeRosa on August 13, 2007, requesting a change of correspondence address in the above-identified application to Customer No. 20999. Petitioners aver that the USPTO improperly rejected petitioners' request of August 13, 2007, on the basis that Mr. DeRosa did not have power of attorney in the subject application. Petitioners assert that Mr. DeRosa had power of attorney in the application, and thus, the Customer Number Upload of August 13, 2007, should have been processed. Petitioner argue that the abandonment occurred because of the USPTO's failure to change the correspondence address and mail the Notice of Allowance and Fee(s) Due to the new correspondence address.

After reviewing the USPTO's records, and consulting with the Electronic Business Center, it appears that on August 13, 2007, the USPTO received a cover letter and a CD containing an Excel spreadsheet of patents and patent applications to be changed from Customer No. 29858 to Customer No. 20999, signed by Mr. DeRosa. Furthermore, the records indicate that Mr. DeRosa was associated with Customer No. 20999 on August 1, 2007, and therefore, had the authority to request the change. Thus, it appears that the USPTO/Electronic Business Center improperly rejected the August 13, 2007 request

to change the correspondence address in the subject application to the address associated with Customer No. 20999. Consequently, the Notice of Allowance and Fee(s) Due was mail to an incorrect correspondence address.

In view of the above, the petition is **granted**. The holding of abandonment is hereby withdrawn and the application is being returned to pending status.

This application is being referred to the Technology Center technical support staff of Art Unit 2141 for re-mailing the Notice of Allowance and Fee(s) Due of December 13, 2007. The three-month statutory period for reply will run from the re-mailing date of the Notice.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

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